

**REMARKS**

Reconsideration and allowance are requested.

The amendments to the claims address the issues on pages 2-3 of the office action. Claim 12 adds subject matter cancelled from claim 7. No new matter has been added by the above amendments or by the present response.

**Claim Rejections:**

In view of the above amendments withdrawal of the claim objections and rejections are requested.

**Claims 1-5, 7, and 11 are patentable under 35 U.S.C. 103(a) over Yamashita (JP 06128121 A), Aizawa et al (JP 58079912 A) and Tomono et al. (JP 11279069 A) in view of Hasegawa et al. (JP 2001302525 A) and Larsen et al. (U.S. Publication No. 2005/0113293).**

Applicant traverses the art rejection based on the abstracts of each of the four Japanese references with a statement "translations have been ordered" for each reference indicating that the body of each reference has more than what the abstract states, particularly that there is a possibility that each of those references teach away from a combination with the others.

Applicant requests that the Examiner provide the translations of the complete references for each of the cited Japanese publications, so that Applicant can adequately rebut the rejections. See, for example, MPEP 707.059(a).

The Examiner relies on each of the references of Yamashita, Aizawa, Tomono, Hasegawa and Larsen as teaching individual components of the claimed invention without providing any basis

APR 27 2009

PTO/SB/21 (10-08)

Approved for use through 11/30/2008. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL  
FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

10

Application Number

10/577,976

Filing Date

04/02/2007

First Named Inventor

Flemming Kjærgaard CHRISTENSEN

Art Unit

1665

Examiner Name

Qiuwen Mi

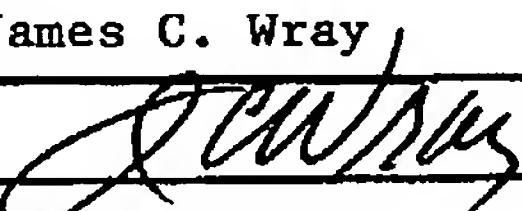
Attorney Docket Number

PATRADE

## ENCLOSURES (Check all that apply)

<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
<input checked="" type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input checked="" type="checkbox"/> Amendment/Reply	<input type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation	<input type="checkbox"/> Status Letter
<input checked="" type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Change of Correspondence Address	<input type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Terminal Disclaimer	
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Request for Refund	
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> CD, Number of CD(s) _____	
<input type="checkbox"/> Reply to Missing Parts/Incomplete Application	<input type="checkbox"/> Landscape Table on CD	
<input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53		
Remarks		

## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	James C. Wray		
Signature			
Printed name	James C. Wray		
Date	04/27/2009	Reg. No.	22,693

## CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature			
Typed or printed name	Julie H. Gamotis	Date	04/27/2009

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

whatsoever as to where in each reference there is a motivation to combine the five teachings and arrive at the present invention.

The Examiner's rejections are all based on precisely an "obvious to try" holding which has been repeatedly reversed by the Courts. A statement that modifications of the prior art to meet the claimed invention would have been "well within the ordinary skill of the art at the time the claimed invention was made" because the references relied upon teach that all aspects of the claimed invention were individually known in the art (emphasis supplied) is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). \* \* \*">[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR*, 550 U.S. at \_\_\_, 82 USPQ2d at 1396 quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006).

The Examiner does not provide any reasoning for why one of ordinary skill in the art would be motivated to use both Yamashita and Tomono when both are being relied on as teaching the elimination of active oxygen. Nothing in the abstracts of each of those references teaches or suggests a combination of the two. In fact, they teach away from combining because they teach an either/or alternative with the same results arrived at with either *apalathus linearis* or *Arctostaphylos uva-ursi*. Hasegawa mandates glycocyl-L-ascorbic acid with a combination of one or more other of 19 plant extracts. Thus, if the Examiner relies on Hasegawa for *Equisetum* there is no showing where in the reference there is a teaching or suggestion to use any of the plant extracts without the ascorbic acid required by Hasegawa. Larsen has been relied on as teaching alkaloid boldine. Larsen uses the alkaloid boldine with other compounds for treating different ailments in middle

aged and elderly people. The claimed diacetyl boldine works via  $\alpha$ -adrenergic antagonist receptors and calcium flow regulation and is not described, taught or suggested by Larsen.

Moreover, nothing in any of the references teach or suggest a combination as effected by the Examiner. The mere fact that references can be combined or modified does not render the resultant combination obvious unless  $\Rightarrow$ the results would have been predictable to one of ordinary skill in the art. *KSR International Co. v. Teleflex Inc.*, 550 U.S. \_\_\_, \_\_\_, 82 USPQ2d 1385, 1396 (2007).

Furthermore, it is respectfully submitted that the Examiner has not produced a *prima facie* case of obviousness for at least Claims 2-5, 7, and 11 for the additional reason that the limitations of those claims have not been addressed. It should not be left to the Applicant to attempt to reason how the rejection of claim 1 might apply to the dependent claims as it would be based on assumptions and conjecture.

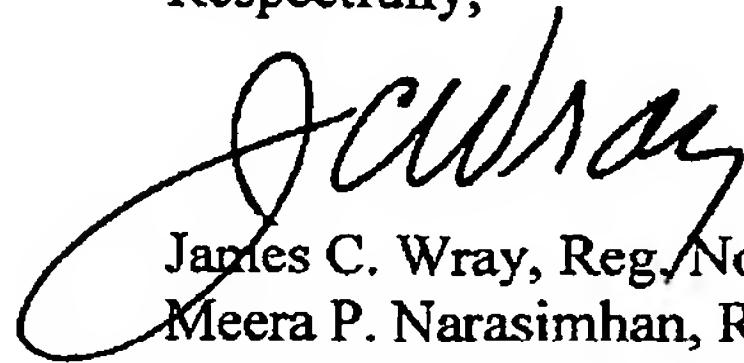
If examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of the patent. *In re Oetiker*, 25 USPQ2d 1443, 1447 (Fed. Cir. 1992) citing *In re Grabiak*, 226 USPQ 870, 873 (Fed. Cir. 1985). The office action does not provide any basis for the rejection of each of the features in at least Claims 10 and 30 and therefore applicant is unable to determine Examiner's basis for the rejection of each of the claims to adequately rebut the rejections. Therefore, as dictated by Oetiker "without more applicant is entitled to grant of the patent."

For these additional reasons, and for the reasons set forth regarding the rejection of Claim 1, the rejection of the Claims 2-5, 7 and 11 under 35 U.S.C. 103(a) is also improper, and should be withdrawn.

**CONCLUSION**

Reconsideration and allowance are respectfully requested.

Respectfully,



James C. Wray, Reg. No. 22,693  
Meera P. Narasimhan, Reg. No. 40,252  
1493 Chain Bridge Road, Suite 300  
McLean, Virginia 22101  
Tel: (703) 442-4800  
Fax: (703) 448-7397

April 27, 2009